

In the December 13, 2000, preliminary hearing order, the Administrative Law Judge granted claimant's request for medical treatment for her bilateral carpal tunnel syndrome. The order did not name a respondent and insurance carrier responsible for the payment of the ordered medical treatment. But the Administrative Law Judge, in the December 12,

2000, preliminary hearing transcript, announced that claimant's request for medical treatment for her bilateral carpal tunnel syndrome was granted and Good Samaritan and Travelers would be responsible for the payment.

On appeal, Good Samaritan contends that claimant's bilateral carpal tunnel syndrome did not arise out of and in the course of her employment with Good Samaritan. Instead, Good Samaritan argues that claimant's bilateral carpal tunnel syndrome was directly related to claimant's work activities while employed part time by Seward County.

Conversely, Seward County argues that the Administrative Law Judge was correct and claimant's bilateral carpal tunnel syndrome arose out of and in the course of her employment with Good Samaritan. Thus, Seward County requests the Appeals Board to affirm the Administrative Law Judge's preliminary hearing order.

The claimant contends she has proven that her bilateral carpal tunnel syndrome arose out of and in the course of some employment relationship either while working part time for Good Samaritan or while working part time for Seward County. The claimant, therefore, contends she is entitled to medical treatment for her bilateral carpal tunnel syndrome from either one of the dual employers.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board makes the following findings and conclusions:

On March 10, 2000, while employed by Good Samaritan as a certified nursing assistant (CNA), claimant was using a lift to assist a 300-pound patient back into bed. As claimant was pushing the lift with the patient, she felt a sharp pain in her right hand. The pain was so severe that she released her right hand from the lift which caused her to fall on her hands and knees. She also testified that as she fell her right knee hit the edge of the patient's bed.

At the time claimant reported the accident to Good Samaritan, the accident report indicates that she complained of injuries to her right upper extremity, right knee, and right lower leg.

Respondent voluntarily provided medical treatment through Ian F. Yeats, M.D. Dr. Yeats first saw claimant on March 28, 2000, with soreness in both wrists and the right knee. His diagnostic impression was bilateral carpal tunnel syndrome and degeneration of the medial right knee joint space. He prescribed splints for both wrists, a brace for the right knee, anti-inflammatory medication, vitamin B<sub>6</sub> and vitamin E. He also placed claimant on light-work duty.

Claimant returned to Dr. Yeats on April 11, 2000, with complaints of severe pain in her right and left hands, particularly in the wrist areas. Also, claimant had complaints of right knee pain. The doctor diagnosed degenerative changes in claimant's right knee maybe aggravated by her work and, also, bilateral carpal tunnel syndrome, greater on the right than the left. Claimant was referred for a nerve conduction study and for consultation with an orthopedic surgeon.

Claimant was seen by orthopedic surgeon J. E. Harrington, D.O., on May 9, 2000. Claimant gave a history of falling while working for Good Samaritan as a CNA on March 10, 2000. Claimant complained of pain and numbness off and on in her right hand and soreness and pain in the right knee. After conducting a physical examination and reviewing x-rays and the nerve conduction study, Dr. Harrington's diagnostic impression was internal derangement of the right knee, bilateral carpal tunnel syndrome, and symptom magnification. Bilateral cock-up splints were prescribed for claimant to wear while continuing to work on light duty, and claimant was scheduled for an MRI examination of the right knee.

Claimant returned to see Dr. Harrington on May 19, 2000. Claimant continued to have pain in her hands, greater on the right than the left. She was without pain in the right knee but had some swelling to the right knee and some pain when she twisted the knee. The MRI examination showed a posterior tear of the medial meniscus. Dr. Harrington's diagnosis was torn right knee medial meniscus and bilateral carpal tunnel syndrome. Dr. Harrington returned claimant to work with instructions to wear bilateral cock-up splints and restricted claimant from kneeling, crawling, climbing, and squatting. The doctor advised claimant to consider bilateral carpal tunnel releases and arthroscopic surgery on the right knee.

On March 10, 2000, the day claimant fell while working for Good Samaritan, claimant was also employed part time for Seward County. Claimant testified she had been employed by both employers for approximately three years. Claimant worked five days per week for about 4 hours per day from 10 a.m. to 2 p.m. for Seward County. The record is not so clear on the number of hours claimant worked per week for Good Samaritan. Claimant testified she worked for Good Samaritan three to four days per week and worked 8 hours per day. At another point, however, claimant testified she would sometimes work on Monday and then not until Friday. Claimant also testified that she averaged 15 to 20 hours per week while working for Good Samaritan. Good Samaritan's human resource manager testified that claimant worked sporadically because she was able to schedule the work she wanted.

At Good Samaritan, claimant worked as a CNA responsible for the care of nine patients. Her work duties included helping patients in and out of bed, bathing patients, turning bedfast patients in bed, feeding patients, and changing patients as needed. Claimant testified that the CNA job duties required her to use her hands repetitively and most of the duties she had to perform were heavy lifting, pulling, and pushing job duties.

Claimant's main job responsibility while working for Seward County was serving meals at the senior center. This involved dipping food out on plates. Other job duties were rinsing dishes, placing them in a dishwasher, sweeping, and cleaning off tables.

On May 20, 2000, after claimant saw Dr. Harrington, Good Samaritan made the decision that claimant's alleged accidental injuries did not occur while she was employed for Good Samaritan. Accordingly, Good Samaritan notified claimant by letter that it was denying her workers compensation claim.

On June 8, 2000, claimant sent a demand letter to Good Samaritan requesting medical treatment for her alleged work-related injuries. Then on June 20, 2000, because Good Samaritan failed to provide the requested medical treatment, claimant filed an Application for Hearing and an Application for Preliminary Hearing.

Claimant then was examined at claimant attorney's request by physical medicine rehabilitation physician Pedro A. Murati, M.D. Dr. Murati saw claimant on August 15, 2000. Claimant had complaints of bilateral hand pain with numbness, right knee pain, right shoulder pain, and occasional neck pain. Claimant provided a history of suffering accidental injuries while lifting a patient while working for Good Samaritan. After reviewing medical treatment records and conducting a physical examination of claimant, Dr. Murati's diagnostic impression was medial meniscus tear of the right knee, bilateral carpal tunnel syndrome, right rotator cuff strain, and myofascial pain syndrome of the right shoulder and neck. Dr. Murati opined that due to the severity of claimant's bilateral carpal tunnel syndrome condition the March 10, 2000, accident while working for Good Samaritan probably did not cause the carpal tunnel syndrome. He recommended (1) an MRI of the right shoulder, (2) depending on the MRI examination results, claimant may need appropriate conservative treatment or surgical consultation, and (3) surgery was recommended for the bilateral carpal tunnel syndrome as well as the right knee meniscal tear.

On August 22, 2000, the Administrative Law Judge held a preliminary hearing on claimant's request for medical treatment for work-related injuries to her bilateral wrists for carpal tunnel syndrome, right knee, right shoulder, and neck. In the September 1, 2000, preliminary hearing order, the Administrative Law Judge, in Docket No. 256,206, ordered Good Samaritan and Travelers to provide medical treatment for injuries to claimant's neck, shoulder, and knee. But the Administrative Law Judge did not order Good Samaritan to provide medical treatment for claimant's bilateral carpal tunnel syndrome condition. The Administrative Law Judge did not make a decision on the bilateral carpal tunnel syndrome issue because Good Samaritan raised as a defense that claimant's bilateral carpal tunnel syndrome was directly related to claimant's work activities while she was working on her other part-time job with Seward County.

Accordingly, on October 5, 2000, claimant filed an Application for Hearing and an Application for Preliminary Hearing alleging that claimant's bilateral carpal tunnel syndrome

occurred while performing repetitive work activities each and every work day while employed by Seward County. This claim was assigned Docket No. 259,402.

Claimant's request for medical treatment for the bilateral carpal tunnel syndrome was then considered in the preliminary hearing held on December 12, 2000, with both docketed claims consolidated for the one hearing. After considering the testimony and reviewing the exhibits, the Administrative Law Judge found claimant's need for medical treatment for her bilateral carpal tunnel syndrome was also the responsibility of her employment with Good Samaritan.

At the December 12, 2000, preliminary hearing, claimant testified that Good Samaritan had terminated her employment for tardiness in July 2000. Also, claimant testified she had her right knee surgically repaired on November 14, 2000. Claimant had continued to work for Seward County until her November 14, 2000, surgery. But because of the knee surgery, claimant was not presently working for Seward County. Claimant testified she continued to have pain and discomfort in both hands and wrists. The pain and discomfort had not improved but had not worsened since she had been terminated and was no longer working for Good Samaritan.

Good Samaritan argues that the Appeals Board should reverse the Administrative Law Judge because the more persuasive evidence proves that claimant's repetitive hand-intensive duties performed while working part time for Seward County are more probably than not the cause of claimant's bilateral carpal tunnel syndrome. Additionally, Good Samaritan points to Dr. Murati's finding that claimant's severe carpal tunnel syndrome was not caused by the March 10, 2000, accident.

The Appeals Board disagrees with Good Samaritan's arguments and finds that the Administrative Law Judge's preliminary hearing order entitling claimant to medical treatment for her bilateral carpal tunnel syndrome condition should be paid by Good Samaritan and its insurance carrier, Travelers. The Appeals Board finds this conclusion is supported by the fact that claimant's repetitive work activities while employed by Good Samaritan were much heavier and more strenuous than the work activities she was required to perform as a kitchen assistant with Seward County. The Appeals Board also interprets Dr. Murati's conclusion that the March 10, 2000, accident could not have been the sole cause of claimant's severe carpal tunnel syndrome as not a conclusion that the carpal tunnel syndrome could not have occurred while working for Good Samaritan.

At this point in the proceedings, the Appeals Board concludes it is more probably true than not that claimant's heavy and more strenuous work activities she was required to perform as a CNA would result in claimant developing carpal tunnel syndrome more than the light and easier job duties performed while employed by Seward County. Also, the Appeals Board finds another significant factor that supports this conclusion is that claimant performed the heavy CNA work activities for a full 8-hour shift rather than a shorter 4-hour shift of the lighter and easier job activities she performed while working for Seward County.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Pamela J. Fuller's December 13, 2000, preliminary hearing Order for Medical Treatment, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS  
William L. Townsley, III, Wichita, KS  
James M. McVay, Great Bend, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director